No. 83-465

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

EDWARD RONWIN,

Petitioner,

vs.

SUPREME COURT OF ARIZONA,

Respondent.

PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S REPLY BRIEF

ARGUMENT

Respondent has filed a "Brief in Opposition," but it is not responsive to Petitioner's ("Ronwin") Petition for Certiorari.

Respondent argues the Schware v. Board of Bar Examiners of State of New Mexico, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) is the main case upon which Ronwin relies, Respondent's Brief at 33. That is

incorrect. Ronwin relies heavily on four other cases, Petition at 8-9, particularly that of Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963), for the proposition that Respondent cannot deny Ronwin's application for admission to the Arizona State Bar without prior notice to Ronwin of what charges Respondent wishes to bring and without a hearing at which the full panoply of due process is accorded to Ronwin, Goldberg v. Kelly, 397 U.S. 254, 261-262, 267-271, 90 S.Ct. 1011, 1017, 1020-1022 (1970).

Respondent addresses the Schware case by presenting a purported comparison between Mr. Schware's situation and Ronwin's. In the process, Respondent claims that Ronwin, "has consistently demonstrated through conduct and in writing his inability * * * to professionally engage in an adversarial situation," Respondent's Brief at 34. What conduct? Where is the record evidence on

the alleged conduct? Where has it been shown that Ronwin's conduct is evidence of lack of mental ability to practice law.[1]

That technique of making an assertion and then proceeding as though the bare assertion were true (even where the evidence is to the contrary, infra) is the consistent pattern employed throughout Respondent's Brief. But, nowhere do Respondents address the commands of Willner, 373 U.S. at 103-105, 83 S.Ct. at 1180-1181, Petition at 9-11, or explain why they are justified in ignoring those commands. In addressing Schware, Respondents have neither attempted a definition of mental ability nor demonstrated error in Ronwin's claims, Petition at 17-19, that Respondent's determinations of

[1] Ronwin has been a member of the Iowa Bar since 1974 and has handled numerous cases. Most of the cases have been concluded with judgment or settlement in favor of or satisfactory to Ronwin's clients. No charges of unethical or unprofessional conduct have ever been lodged against Ronwin. Without hearing, these matters do not come to Respondent's attention or enter into the record.

mental ability are "irrational and, as bad, a thinly veiled attack on Ronwin's First Amendment rights to vocalize his exposure of misdeeds by some parties connected with the judicial establishment in the State and District of Arizona,"Petition at 19.

Respondent presents a "Statement of the Case" which dwells on prior cases that Ronwin has filed in the U.S. District Court and which are essentially irrelevant hereto. Respondent purports to summarize each case; however, it fails to explain, except in one instance, that five of the seven U.S. District Court cases were brought after summary denial without hearing or notice of "what the Government proposes," Willner, 373 U.S. at 103-105, 83 S.Ct. at 1180-1181, Petition at 9-11.(One of the seven cases, Ronwin v. State Bar of Arizona, is now Hoover v. Ronwin, 82-1474, in this Court). Instead, Respondent hopes that by giving a skewed view

of allegations it attributes to Ronwin which involve persons connected with the State and Federal judiciary in Arizona, it will enlist the sympathy of this Court. The technique is identical to that employed by Respondent in its decision, Application of Ronwin, SB 52-8/52-9, opinion dated July 6, 1983, text at Appendix ("App.") to Petition at 1-55, and which forms part of the basis for the Petition; i.e., that instead of allowing due process as required by Willner and Goldberg, Respondent removes allegations from pleadings, briefs and documents in cases not before it for trial or hearing and without hearing on whether the allegations are true, acts on the allegations as though they were true and labels Ronwin as mentally unable to practice law by a process of "trial by judicial notice," Petition at 13-16.

For example in allegedly summarizing the case of Ronwin v. Gage, Civ. 78-214 PHX MLR, Respondent's Brief at 9, Respondent charges

that Ronwin "accused prominent attorneys (including his former counsel) of deceiving the Court as to the identity of a person who allegedly altered an official transcript." The allegation is left hanging with the implication that Ronwin is lying. Yet at 60-63, App. to Petition, the record evidence is set out to prove the allegation and that the "prominent" attorneys effectively admitted their deception of the Court, (see Petition at 14-15). But, Respondent has no more respect for the truth in its Brief than it had in its decision where it declared, App. to Petition at 34:

> * * * If the truth or his belief in the truth of these allegations were of importance to this decision, due process would entitle Ronwin to such a hearing.

The allegations are of importance to the decision because that is why Respondent claims it is holding Ronwin not mentally able and that is why the truth of the allegations must be determined in hearing.

As another example, Respondent writes, Brief at 32-33:

> Petitioner also submitted the medical report of Dr. Taylor, a psychiatrist who examined petitioner in Iowa. Although Dr. Taylor reported that he found no indication that Petitioner now suffers from any type of mental illness, disorder or defect, he acknowledged that Petitioner possessed personality traits 'which might be termed unpleasant or abrasive by those adopting positions in opposition to those held by [Petitioner].' Dr. Taylor could only state that it was 'possible' (not probable) that such personality traits would not impair Petitioner's ability to competently practice law..(emphasis (added)

That statement is a paraphrase of Respondent's decision, App. to Petition at 12, and the comments attributed to Dr. Taylor allegedly come from Dr. Taylor's 1977 report on Ronwin, which he reaffirmed in his 1980 report after a new examination. Respondent erroneously reports what Dr. Taylor said. What Dr. Taylor actually stated was, p.2 of his 1977 report:

> **Mr. Ronwin possesses certain personality traits which might be deemed unpleasant and/or abrasive by those adopting positions in opposition to those**

> held by Mr. Ronwin. I certainly would not relish the thought of appearing as an expert witness for the party in opposition to Mr. Ronwin's client and having to face cross-examination by Mr. Ronwin. It is impossible for me to conceive of a situation in which the above-mentioned personality traits would result in any actions being taken which might be deleterious to Mr. Ronwin's clients or which might, in any way, impair his ability to conscientiously and competently practice law. (emphasis added).

What Dr. Taylor said is diametrically opposite to what Respondent would have this Court believe; and Dr. Taylor emphasized his diagnosis 3 years later in his 1980 report.[2] A copy of both of Dr. Taylor's reports are in the Appendix to this Brief.

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[2] In the evidentiary hearing before the Iowa Supreme Court on June 22, 1977, Ronwin questioned Dr. Taylor on the point concerning the quoted description. The following dialogue occurred, p.17, line 17 to p.18, line 9 of the transcript of the Iowa hearing:

Q(By Ronwin) Why the descriptive adjectives that you used concerning the method of interrogation that I might use? Would you consider, however, that you did get any indication that would be out of the ordinary, violent, so unsocial or abusive that it would not be tolerable in your opinion?

A.(By Dr. Taylor) When I stated that I would be

With an evidentiary hearing, Respondent could not in good faith report the erroneous description of Dr. Taylor's testimony that they do.

Respondent's brief is replete with other misstatements of fact and erroneous conclusions. It is not the function of this brief to meticulously expose the errors; that is irrelevant at this juncture. There is, however, one flagrant abuse which needs address.

Respondent misuses the "compulsive personality" notion attributed to Ronwin, see

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2 Cont'd
uncomfortable on the witness stand being cross examined by you, what I meant was I didn't feel like I could get by saying any bull, that you would have thoroughly researched your case. You would have a thorough knowledge of background to the best of your ability,what I would be testifying to, and I better not slip up or I would be caught. I didn't mean to imply at all that it would be counterproductive. It would just be uncomfortable for me.

Q. All right. Do you feel uncomfortable today?

A. No.

Respondent's decision, App. to Petition at 12 and its Brief at 28-33. Since all three experts (Drs. Taylor, Canter and Duisberg) agreed that Ronwin was not mentally ill and was mentally able to practice law, even though two of them (Drs. Canter and Duisberg) thought that Ronwin had a "compulsive personality"[3], that should have been a bar

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[3]Dr. Duisberg admitted to Ronwin in telephone conversation that he did not have a basis from the one hour examination for holding Ronwin to be a compulsive personality. Ronwin has a tape of that examination proceeding, but in the absence of cross-examination and hearing, Ronwin has no way to elicit that admission from Dr. Duisberg under oath. Ronwin is confident he could elicit such admission from Dr. Duisberg and also from Dr. Canter. Ronwin holds a PhD in Biochemistry and was a professor at medical and similar universities for about 20 years before going to law school. Ronwin has done considerable original research in medical and chemical areas and has publications in evidence. Ronwin is not awe-struck by medical experts.

It is also a fact not able to be elicited for the record without a hearing and the ability to call witnesses that the "compulsive personality" state is not a category widely recognized by mental health experts, particularly psychiatrists.

to finding Ronwin not mentally able by resort to the "compulsive personality" notion. Instead, the members of Respondent Court, who are laymen in mental health matters and one of whom admitted in his deposition in Ronwin v. Gage, supra, and in his interrogatories in the same case that he was dependent on expert testimony to determine the mental state of any person,[4] simply push aside the essential finding by the 3 experts (confirming four earlier experts) that Ronwin is mentally able to practice law and attempt to, indeed, do label Ronwin not mentally able using the "compulsive personality" theme, which the experts, in effect,excluded as a basis for so holding. How can Ronwin ever demonstrate mental ability to practice law if the expert opinions not contradicted by any record evidence or testimony is simply discarded because it

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[4] Justice James Duke Cameron

does not suit the fancy of the members of Respondent Court? That is an impossible and irrational process surely barred by the Fifth and Fourteenth Amendments, Willner, Schware.

According to Dr. Canter, Respondent's Brief at 32, the compulsive personality is reflected in:

> ..restricted emotionality, perfectionism, the insistence that others submit to one's way of doing things, and excessive devotion to work productivity. These are elements which, according to the present psychological examinations, are most dominant in Dr. Ronwin.

Assuming, arguendo, that Dr. Canter's diagnosis is correct (see footnote 3 at 10 above), how does "restricted emotionality" prevent one from practicing law; and, really, what does the jargon actually mean?

Why is "perfectionism" a bad thing in a lawyer? The trouble with most lawyers is their lack of perfectionism which evidences itself in lack of preparedness for trial or other duties in their work; particularly

a notorious failure to sort fact from fiction, which is well illustrated by Respondent's Brief.

That many people want others to submit to their way of doing things is an age-old symptom of most of the human race. It is a universal phenomenon. Every boss or manager of every enterprise easily falls into that category. How would that make one "not mentally able" to practice law?

What is wrong with "excessive devotion to work productivity"? Why can't one work hard in America? Do we all have to be slovenly, sloppy, indolent and inefficient? Why is hard work a basis for finding one "not mentally able" to practice law?

The irrationality of Respondent's view of mental ability is glaring and it is unconstitutional, Schware, 353 U.S. at 238, 77 S.Ct. at 756.

Respondent's whole approach in this case is an appalling outrage; and, most import-

ant, rather than respond to Ronwin's claims as presented in the Petition, Respondent ignores the Petition and, using a technique which includes untruths, half-truths,plain nonsense and undisguised smear, Respondent hopes that by dint of its status, this Court will allow it to ignore the command of Schware and of Willner and to label perfectly sane men not mentally able to practice law; and hopes that this Court will allow it to summarily deny applications for admission to the bar without notice, hearing or due process; and will allow it to violate the basic tenets of our judicial system by use of "trial by judicial notice."

CONCLUSION

For the foregoing reasons and those in the Petition, the Writ of Certiorari should be granted.

Respectfully submitted,

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DATED: October 19, 1983

(APPENDICIES FOLLOW)

[illegible] BOARD OF
PSYCHIATRY AND NEUROLOGY

ADULT PSYCHIATRY

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June 21, 1977

The Supreme Court of Iowa

Re: Edward Ronwin
Supreme Court #60678

Gentlemen:

On June 17, 1977, I conducted a 2½ hour interview with Mr. Edward Ronwin for the purpose of rendering an opinion as to whether or not Mr. Ronwin is mentally capable of practicing Law. The evaluation was conducted at the request of Mr. Ronwin in anticipation of a hearing regarding Mr. Ronwin's mental capabilities to continue to function as a licensed member of the legal profession in Iowa. I write to summarize the results of my evaluation of Mr. Ronwin. I shall also briefly summarize the information upon which my opinion is based and offer the Court a brief description of my qualifications and experience.

I am a Board Certified Psychiatrist licensed to practice medicine in the states of Iowa and California. I was certified by the American Board of Psychiatry and Neurology in June of 1976. I am presently Medical Director of the new 150-bed psychiatric inpatient unit to be constructed in Des Moines. Subsequent to having completed medical school and my psychiatry residency at the University of Iowa College of Medicine and prior to my return to Des Moines in September of 1976, I practiced in Stockton, California. In addition to serving on the faculty of the University of California, Davis, College of Medicine and as a psychiatric consultant to San Joaquin County Mental Health Services, I also served as a psychiatric consultant to the Superior Court of the State of California. In addition to performing numerous evaluations in both criminal and civil matters as a Court-appointed psychiatrist (an activity which frequently brought me into contact with a large number of different attorneys), I was also frequently called upon by either the Office of the District Attorney or by defense attorneys to offer opinions and advice. I feel that I have a full awareness of the pressures under which attorneys must frequently function, having assisted in the prosecution, in some cases, and the defense, in other cases, of several highly-publicized death penalty murder cases.

I am aware that Mr. Ronwin has had four previous professional evaluations regarding his psychiatric status. In November of 1974, Francis A. Enos, Ph.D. and Robert H. Barnes, M.D. submitted reports to The Committee on Examinations and Admissions of The Supreme Court of The State of Arizona. In December, 1974,

an evaluation was made by Howard S. Gray, M.D. Max I. Tuchler, M.D. submitted a report in July, 1975. An evaluation was performed by Hal J. Breen in August, 1976. Mr. Ronwin provided me copies of all of the reports from the above-mentioned evaluations and those reports have been thoroughly reviewed and taken into consideration in the formation of the opinion offered below.

Based upon my 2½ hour interview with Mr. Ronwin and upon the other information which has been available to me, I find absolutely no indication that Mr. Ronwin now suffers, or has at any time in the past suffered from any type of mental illness, mental disorder or mental defect. Mr. Ronwin possesses certain personality traits which might be deemed unpleasant and/or abrasive by those adopting positions in opposition to those held by Mr. Ronwin. I certainly would not relish the thought of appearing as an expert witness for the party in opposition to Mr. Ronwin's client and having to face cross-examination by Mr. Ronwin. It is impossible for me to conceive of a situation in which the above-mentioned personality traits would result in any actions being taken which might be deleterious to Mr. Ronwin's clients or which might, in any way, impair his ability to conscientiously and competently practice Law.

If further elaboration is required by either the Court or the Bar, either body should feel free to contact me.

Respectfully submitted,

Michael J. Taylor, M.D.

MJT/jl

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November 25, 1980

The Supreme Court of Arizona

Re: Edward Ronwin

Gentlemen:

On November 25, 1980, I interviewed Mr. Ronwin for approximately one hour for the purpose of determining whether or not there had been any change in his psychiatric condition in the interval since my original evaluation of him which took place on June 17, 1977, and the results of which were described in a June 21, 1977, letter to the Justices of the Iowa Supreme Court (appended hereto).

Based on the information gathered during my interview with Mr. Ronwin and based upon all of the information which was previously available to me at the time of my original report, it continues to be my opinion that Mr. Ronwin suffers from no mental illness, no mental disorder or mental defect. It continues to be my opinion that, as I described in the last major paragraph of my June, 1977, report, Mr. Ronwin would be a worthy adversary in any type of legal proceeding. I find no evidence of any impairment which might, in any way, impair his ability to conscientiously and competently practice law.

Respectfully submitted,

Michael J. Taylor, M.D.

MJT/jl